IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14-9-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.23134 of 2007
and
M.P.Nos.1 & 2 of 2007

G.Daniel Gunaseelan .. Petitioner

Vs.

1. The District Educational Officer,
   Chennai North,
   Chennai 600 008.

2. The Diocesan Educational Officer,
   Diocese of Madras,
   Chennai 600 086.

3. The Correspondent,
   C.S.I. St. Paul's Higher Secondary School,
   Vepery, Chennai 600 007.

4. The Bishop and the Manager of all School,
   Vepery, Chennai 600 007.

5. The Headmaster,
   C.S.I. St. Paul's Higher Secondary School,
   Vepery, Chennai 600 007. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the third respondent in connection with the order passed by him in his proceedings No.51/COR/ESTT/2007 dated 29.6.2007 and quash the same in so far as the denial of reemployment to the petitioner till the end of the academic year 2007-2008 is concerned and direct the respondents to grant of reemployment till the end of the academic year 2007-2008 (i.e.) till 31.5.2008.

For Petitioner : Mr.S.Selvathirumurugan

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For Respondent-1 : Mr.Pa.Kadirvel,
Govt.Advocate.

For R-3 & R-5 : Mr.R.Muthukumarasamy, S.C.
For Mr.V.Sanjeevi

...

O R D E R

The petitioner has come forward with the present Writ Petition challenging the proceedings of the 3rd respondent dated 29.6.2007 and quash the same in so far as denial of re-employment till the end of the academic year 2007-08 is concerned and direct the respondents to grant re-employment till the end of the academic year 2007-08 (i.e.) 31.5.2008.

2. The case of the petitioner in nutshell is as follows:-
The petitioner was appointed as B.T. Assistant on 19.6.1972 and after working in various capacity in various schools, he was transferred to the 3rd respondent-school by an order dated 1.6.2005. Since he was attaining the age of superannuation on 30.6.2007, he has made a request on 27.6.2007 to the Correspondent of the 3rd respondent-School to permit him to continue in job till the end of the academic year, (i.e.) 31.5.2008. While so, on 30.6.2007, he was served with an order dated 29.7.2007 stating that he shall retire from service on the afternoon of 30.6.2007. This led to the filing of an appeal dated 2.7.2007 to the first respondent, but the same has not been considered so far. Hence, the petitioner has approached this Court by way of the present Writ Petition for the relief set out earlier.

3. Counter affidavit has been filed by the respondents 3 and 5 and the brief facts narrated thereon is as follows:-

The petitioner did not seek for any re-employment and he did not evince any interest in getting re-employment. Though various G.Os. provide for re-employment of the school teachers who reach the age of superannuation during the middle of the academic year till the end of the academic year, the same contain certain conditions and the petitioner does not fulfill the same and hence, he is not entitled for re-employment. The petitioner's work and conduct during the period of service in the school is not satisfactory and that he is insubordinate to the Headmaster, Correspondent and other superiors of the school and on one occasion (i.e.) 16.11.2006, a memo has been issued to the petitioner seeking explanation from him for his misconduct. Furthermore, as soon as he jointed in the present school on transfer on 3.6.2005, he has applied for medical leave from 6.6.2005 to 31.7.2005 and he has not joined duty on 1.8.2005, but he has extended his medical leave. He has been referred to the medical board and after examining him on

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12.9.2005, the petitioner has been directed to join duty immediately and he joined duty on 12.9.2005. He has not given medical certificate for the period from 1.8.2005 to 12.9.2005 and hence, his subsequent increment and other service benefits could not finalised. Thus, the sum and substance of the counter affidavit of the respondents 3 and 5 is that the case of the petitioner cannot be considered on the grounds that he has not requested for re-employment, that his work and conduct is not satisfactory, and that he has not sent the pension papers to the Accountant General one year before his date of retirement which are the prerequisite conditions prescribed in various G.Os. of the Government.

4. Counter affidavit has not been filed by the other respondents. On these backdrop of the matter, Mr.S.Selvathirumurugan, the learned counsel appearing for the petitioner and Mr.R.Muthukumarasamy, the learned senior counsel appearing for the respondents 3 & 5 raised their respective contentions.

5. I have considered the rival submissions made by Mr.S.Selvathirumurugan, the learned counsel appearing for the petitioner as well as Mr.Pa.Kadirvel, the learned Government Advocate appearing for the first rspondent and Mr.R.Muthukumarasamy, the learned senior counsel appearing for the respondents 3 and 5.

6. The right of the teachers to continue in service till the end of the academic year in case of his date of retirement falls in the middle of the academic year cannot be disputed. The said right admittedly flows from various orders of the Government issued from time to him and last of such order flows from G.O.Ms.No.1643 dated 27.10.1988. The said Government Order reads as follows:-

> "In the order first read above, while permitting the continuance of the teachers in service on re-employment terms on their attainment of the age of superannuation in the middle of the school year the following pre-requisite conditions have been prescribed:-
>
> 1. The character and the conduct of the teacher should be satisfactory.
> 2. They should be physically fit to continue in service.
> 2.Now it has been brought to the notice of the Government that in respect of School Education Department, more than 25% of the Pension proposals are being sent to the Accountant-General for settlement in a year. To avoid delay on the part of the teachers who are

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due to retire in preferring their claims and also in view of the fact that almost all the teachers are interested in getting reemployment, the Director of School Education has suggested to incorporate another condition, viz the pension papers should be submitted at least one year before the date of their retirement, be made as the third pre-requisite conditions for re-employment.

3.The Government accept the suggestion made by the Director of Schools Education and direct the condition that pension applications of Teachers working under all management under the control of Education Department including public sector institutions on re-employment terms on their attainment of superannuation in the middle of the school year should be sent to the Accountant General at least one year before the date of their retirement as prescribed as a pre-requisite condition in addition to the two pre-requisite conditions prescribed in G.O.Ms.No.249, Educations, dated 9.2.59."

7. Thus, the above said G.O. stipulates three conditions for the teachers who attain the age of superannuation in the middle of the school year till the end of the school year, namely, (i) the conduct and character of the teacher should be satisfactory; (ii) they should be physically fit to continue in service; and (iii) the pension papers should be submitted at least one year before the date of their retirement. If the petitioner satisfies the above conditions, the petitioner is entitled for re-employment, otherwise he is not entitled for any re-employment.

8. On these backdrop of the matter, it has to be seen whether the petitioner has satisfied the above conditions enumerated in the said G.O. and that he is entitled for re-employment.

9. The case of the petitioner is that there is not even a single memo served on him in his entire service career and his service records are unblemished. He did not suffer any punishment throughout his service. In the year 2002-03, he produced 80% result, in the year 2003-04 he produced 100% result and in the year 2004-05, he produced 80% result.

10. Counter affidavit has been filed by the respondents 3 and 5 wherein it has been pointed out that the petitioner's work and conduct during the period of service in the school was not satisfactory. He was insubordinate to the Headmaster of the school and the Correspondent and other superiors. Three instances have been pointed out for the above said averments. Firstly, after joining in the present school, after transfer, the petitioner has

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applied for medical leave from 6.6.2005 to 31.7.2005 and without medical certificate, he has extended the medical leave for the period from 1.8.2005 to 12.9.2005. Secondly, one Edwin Masilamani, Retired Headmaster inspected the class handled by the petitioner,but the petitioner threatened him and would not allow him to inspect his class and for this mis-conduct, the then Correspondent issued memo dated 16.11.2006 seeking his explanation. But the petitioner did not give any reply. Thirdly, the students of IX Std and XII std have complained to the Headmaster and the Correspondent about his frequent absence and also about not taking classes even during the class hours. Admittedly, for the first and third charges against the petitioner, no action has been taken by the management. Not even the petitioner has been put on notice about the said charges and explanation has been called for from him. For the first time, the said charges are made against the petitioner by way of counter affidavit in the present case. Furthermore, the petitioner has specifically averred that he produced 80% result in 2002-03, 100% result in 2003-05 and 80% result in 2004-05, which is not controverted by the respondents in their counter. Even with regard to the second charge, though a memo has been said to have been given to the petitioner seeking explanation from the petitioner, no action seems to have been taken against him till he attained the age of superannuation. In fact, in the counter affidavit, it has been stated that despite the above fact and misconduct, the management thought it fit not to take any disciplinary proceedings against the petitioner on the verge of his retirement. Thus, even with regard to the second charge that has been levelled against him, no action has been taken by the respondents 3 and 5. The misconduct and other allegations are now made for the first time before this Court.

11. In this connection, it will be useful to refer certain passages in the decision reported in 1996 W.L.R. 259 (DAVIDTHAMPI DHAS, C. v. THE GOVERNING BODY OF N.M.CHRISTIAN COLLEGE & OTHERS). When a similar situation has arisen, this Court in the said decision in paragraph 9 has held as follows:-

> "It is contended by Mr.D.Sadhasivan, learned counsel for the petitioner that when no disciplinary action has been taken against the petitioner, it is mandatory on the part of the management to continue the petitioner in service till 31.5.1996. As rightly pointed out by Mr.D.Sadhasivan, no disciplinary action has ever been taken against the petitioner though some irregularities have been alleged to have been committed in the years 1987 and 1988 when the petitioner was the Head of the Department of Botony."

Further, in paragraph 17 of the said decision, it has been held as follows:-

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"As far as the conduct of the petitioner is concerned, no material is put forth by the management. Therefore, I am of the view, that the decision of the management not to continue the petitioner in service after 31.1.1996 is without any basis and arbitrary. As rightly contended by the learned counsel for the petitioner, there is no question of any teacher asking for any continuation. The Government Order specifically states that the institutions are to continue the teachers till the end of the academic year provided they satisfy the three conditions laid down in the Government Order, G.O.Ms.No.452 dated 24.3.1970, which has been followed in the subsequent orders."

12. In fact, reliance has been placed on decision of the Division Bench of this Court in W.A.No.1179 of 1993 dated 6.9.1994 (S.SUNDARAM v. THE SECRETARY, C.S.I. DIOCESE OF MADRAS). In that case, the Division Bench has pointed out that an analysis of the Government Orders would disclose that re-employment is far ensuring continuity of benefit of teaching from the same teachers to the students during the academic year, that it is a re-employment and not continuity of service on fulfilling the conditions that the work and conduct are satisfactory, that they are physically found fit for the further service and that no disciplinary proceedings are pending against them. Therefore, it is clear, that it is the very same teacher, whose work and conduct are found to be fit for further service and against whom no disciplinary proceeding is pending, is directed to be continued on reemployment basis during the remaining period of that academic year.

13. No doubt as rightly pointed out by the learned senior counsel appearing for the respondents 3 and 5, the teacher should be a role model not only to the students and the institution, but also to the society. But at the same time, the respondents 3 and 5 cannot stall the petitioner to avail the benefits that have been conferred by the Government, namely, allowing the teacher to be in re-employment till the end of the academic year. The petitioner seems to have been aggrieved against his transfer from the other school to the present school and also filed writ petition challenging the same. Furthermore, he seems to have addressed communication to the concerned District Collector bringing to his notice about the ill-treatment caused to him, since he belonged to scheduled caste. Perhaps this would have been weighed in the mind of the school authorities in refusing reemployment to the petitioner till the end of the academic year. For the same, reasons seem to have been culled out to deny the said right.

14. As regards the failure to submit pension papers to the Accountant General one year prior to the date of retirement, it is not the case of the respondents 3 and 5 that even though prior to one year, the petitioner has been reminded about the same, but

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he has not chosen to do so. In para 5 of the counter affidavit, the respondents 3 and 5 have averred as follows:-

> Apart from that, he did not co-operate with the Head Master of the School to prepare the pension papers and sent it to the Accountant General at least one year before the date of his retirement as prescribed as a pre-requisite condition for re-employment. As a matter of fact, his pension papers could not be submitted till today because of his non co-operation and his failure to return his T.S.R. Book.

No doubt the 5th respondent has stated that the petitioner did not co-operative with the Headmaster of the school to prepare the pension papers to be sent to the Accountant General at least one year before the date of his retirement, as a prerequisite condition for re-employment. The 5th respondent has not produced any communication from its end to show that the petitioner has been directed to prepare the pension papers so as to send it to the Accountant General one year prior to the date of his retirement. The allegation in this respect has been made for the first time in the present counter affidavit. In the impugned order rejecting the request of the petitioner for re-employment does not contain such reason.

15. Furthermore, the reading of the counter affidavit will show that the school management has taken a ground that the petitioner has not sought for re-employment till the end of the next academic year. This statement has been denied by the petitioner. Moreover, as rightly pointed out by the learned counsel appearing for the petitioner, the petitioner need not request for re-employment. Re-employment flows from various Government Orders and in fact, in G.O.No.249, Education dated 9.2.1959, it has been stated as under:-

> "The State Government accept the above suggestions and direct that teachers employed in all schools under the control of the Education Department and under public Management who reach the age of superannuation during the middle of the school year should be continued in service of re-employment terms till the date of closure of the school for the summer vacation."

Thus, the said Government Order states that the teacher should be continued in service of re-employment terms till the date of closure of the school for the summer vacation. This does not imply that permission must be specifically sought for.

16. Further, though on the side of the school management several reasons have been attributed for refusing to provide reemployment to the petitioner till the end of the academic year, a

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perusal of the impugned rejection order dated 29.6.2007 will show that no reason whatsoever has been mentioned thereon. The impugned order dated 29.6.2007 reads as follows:-

> "Thiru G.Daniel Gunaseelan, P.G. Assistant (History) of St.Pauls Higher Secondary School, Chennai-7 shall retire from service on attaining the age of superannuation with effect from 30.6.2007 afternoon. No re-employment shall be given by the Management, till the end of the academic year of 2007-2008 to the above said individual."

The above impugned order thus shows that the school management has not assigned any reason for rejecting the request of the petitioner for re-employment.

17. For all the reasons stated above, I am constrained to hold that the denial of re-employment to the petitioner till the end of the academic year is unjust and unreasonable.

18. In the result, the order of the 3rd respondent in his proceedings dated 29.6.2007 is liable to be quashed and accordingly, quashed. The Writ Petition stands allowed. Consequently, the connected M.Ps. are closed. No costs.

19. Before parting with the present case, I express my anguish over the present matter in issue which prevails every year in some of the schools. The teachers are rated above God in the line of succession, namely, மாதா, பிதா, குரு, தெய்வம் [Madha, Pitha, Guru, Deivam]. When such is the position, it is expected more from the teachers at large. It is required that the students shall behave properly, more required is the behaviour of the teachers and the most required is the welfare of the society. As rightly pointed out by the learned senior counsel appearing for the respondents 3 and 5, the teacher should be a role model not only to the students and the institution, but also to the society at large. Much is expected from them, since the future of this country depends on the future generation of the students which entirely lies in the hands of the teacher community. I am constrained to say this since the petitioner shall not think that he has waged a war against the institution and succeeded in the same. He should feel that an opportunity has been given to him to prove before the school management that the action taken by them is totally erroneous. The petitioner can prove the same by his hard work, by his excellent teaching to the students and by his good behaviour. At the end of the academic year, the petitioner shall make the respondent-school management feel that they have taken a wrong decision in not permitting him re-employment till the end of the

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academic year and that they should also feel for the petitioner leaving the school after completing his term. This is possible and the same lies with the petitioner. I hope that it should come true in the end of the academic year when the petitioner leaves the school.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpp

To

The District Educational Officer,
Chennai North,
Chennai 600 008.

+1cc to Mr.V.Sanjeevi, Advocate Sr 57454
+1cc to Mr.Selva Thirumurugan, Advocate Sr 57453
+1cc to Govt. Pleader Sr 57673

SSV (CO)
km/25.9.

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